

REMARKS

Claims 1-18 are cancelled and new claims 19-32 are presented by this amendment. New claims 19-32 find support in original claim 16 and at pages 28-30 of the specification. No new matter is added.

The Examiner rejected claim 14 under 35 USC 112, second paragraph, as being indefinite for failing to provide essential steps of the claimed process. Applicants have cancelled claim 14, rendering this rejection moot.

The Examiner rejected claims 1-4, 6-8, 10, 15, 16, and 18 under 35 USC 102(b) as being anticipated by Baker (US 4,062,977). Claims 1-9, 15, 16, and 18 were rejected under 35 USC 102(b) as being anticipated by Baker (US 4049423). In light of the amendments presented herein, Applicants respectfully traverse.

The present claims have been amended to provide only for fungicidal methods of using the compounds of formula (1). While the Examiner has noted that the active compounds are disclosed as herbicides in the '977 and '423 patents, Applicants submit that the presently claimed invention is directed to a new use for a known compound. As noted by the Examiner, neither Baker reference discloses fungicidal activity of the compounds; rather, the reference only discloses insecticidal or herbicidal activity. As the method for controlling phytopathogenic fungi is disclosed nowhere in these references, Applicants respectfully submit that the rejection under 35 USC 102(b) be withdrawn.

The Examiner indicated that the claimed method would have been inherent in the methods taught by both Baker references. Applicants respectfully disagree. By the present amendment, Applicants have limited the claims such that at least 60% fungal control is obtained. Applicants respectfully submit that there is nothing in the Baker references indicating any fungal control, especially a 60% control against fungi.

The Examiner rejected claims 11-13 and 17 under 35 USC 103(a) as being unpatentable over Baker '423. The Examiner relies on the disclosure of Baker to establish a prima facie case of obviousness for the compounds applied in previously-pending claims 11-13 and 17. However, as noted above, the Baker reference fails to teach or suggest the claimed *method of use* of the compounds. As the claimed methods are new uses for known compounds, even if the Examiner had established a prima facie case with respect to the compounds previously claimed, which Applicants do not comment on one way or the other, Applicants respectfully submit that the Examiner has not established a prima facie case for obviousness of the method of use. Accordingly, Applicants respectfully request withdrawal of this rejection.

In light of the amendments and remarks submitted herein, Applicants respectfully request allowance of all pending claims.

Respectfully submitted,

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